

L.R. 5.2

Protection of Certain Personal Identifiers

(a) **General rule.** The parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all papers filed with the court, including exhibits thereto, whether filed electronically or in paper:

- (1) **Social Security numbers.** If an individual's social security number must be included in a paper, only the last four digits of that number should be used.
- (2) **Names of minor children.** If the involvement of a minor child must be mentioned, **then** only the initials of that child, **or some other means of identification approved by the court under seal**, should be used **to protect the child's anonymity**.
- (3) **Dates of birth.** If an individual's date of birth must be included in a paper, only the year should be used.
- (4) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.

(b) **Sealing of unredacted papers.** A party wishing to file a paper containing the personal data identifiers listed above may:

- (1) file an unredacted version of the document under seal, or
- (2) file a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its(their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

The unredacted version of the document or the reference list shall be retained by the court under seal as part of the record. This paper shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file.

(c) **Social Security cases.** In cases filed under the Social Security Act, 42 U.S.C. § 405(g), there is no need for redaction of any information from the documents filed in the case.

(d) **Responsibility for redaction.** The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each paper for compliance with this rule.

Committee Comments

The proposed amendments to this rule are intended to conform the Northern District rule, at least in part, to the Southern District's rule. The Southern District recently amended its rule relating to the naming of minor children in a complaint due to its concern that the privacy rights of juveniles were compromised by referring to the child's initials, especially if the child's parents are required to be named, as the rule previously provided. The Southern District remedied this concern through use of court approved pseudonyms pursuant to a motion. The Committee's proposed revisions capture the essence of the Southern District's rule without adopting it verbatim. The Committee believed that the issue was properly addressed by a revision to subsection (a)(2). Further, the amendment is not intended to limit pseudonyms to only the name of the minor child; rather, it is contemplated that in some instances the parent's name should also appear as a pseudonym.

L.R. 72.1

Authority Of United States Magistrate Judges

Unless otherwise provided in these Rules, the term “United States Magistrate Judge” shall include full-time magistrate judges, part-time magistrate judges and magistrate judges recalled pursuant to 28 U.S.C. § 636(h).

(a) **Duties under 28 U.S.C. §§ 636(a)(1) and (2).** Each United States magistrate judge of this court is authorized to perform the duties prescribed by 28 U.S.C. §§ 636(a)(1) and (2), and may exercise all the powers and duties conferred upon United States magistrate judges by statutes of the United States and the Federal Rules of Criminal Procedure which include, but are not limited to, the following:

- (1) Acceptance of criminal complaints and issuance of arrest warrants or summonses. (Fed.R.Crim.P. 4.)
- (2) Issuance of search warrants, including warrants based upon oral or telephonic testimony. (Fed.R.Crim.P. 41.)
- (3) Conduct of initial appearance proceedings for defendants, informing them of the charges against them and of their rights, and imposing conditions of release. (Fed.R.Crim.P. 5.)
- (4) Conduct of initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency. (18 U.S.C. § 5034.)
- (5) Appointment of attorneys for defendants who are unable to afford or obtain counsel and approval of attorneys' expense vouchers in appropriate cases. (18 U.S.C. § 3006A.)
- (6) Appointment of counsel for persons subject to revocation of probation, parole or supervised release (in which case preference shall be given to previously appointed counsel if such attorney is still available and willing to serve); persons in custody as a material witness; persons seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 or 18 U.S.C. § 4245; or for any person for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which the person faces loss of liberty, any federal law requires the appointment of counsel.
- (7) Appointment of interpreters in cases initiated by the United States. (28 U.S.C. §§ 1827 and 1828.)
- (8) Direction of the payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required court appearances. (18 U.S.C. § 4285.)

- (9) Setting of bail for material witnesses. (18 U.S.C. § 3149.)
- (10) Conduct of preliminary examinations. (Fed.R.Crim.P. 5.1 and 18 U.S.C. § 3060.)
- (11) Conduct of initial proceedings for defendants charged with criminal offenses in other districts. (Fed.R.Crim.P. 40.)
- (12) Conduct of detention hearings. (18 U.S.C. § 3142(f).)
- (13) Conduct of preliminary hearings for the purpose of determining whether there is probable cause to hold a probationer for a revocation hearing. (Fed.R.Crim.P. 32.1(a)(1).)
- (14) Administration of oaths and taking of bail, acknowledgements, affidavits and depositions. (28 U.S.C. § 636(a)(2).)
- (15) Conduct of extradition proceedings. (18 U.S.C. § 3184.)
- (16) Holding of individuals for security of the peace and for good behavior. (50 U.S.C. § 23.)
- (17) Discharge of indigent prisoners or persons imprisoned for debt under process of execution issued by a federal court. (18 U.S.C. § 3569 and 28 U.S.C. § 2007.)
- (18) Issuance of attachments or orders to enforce obedience of Internal Revenue Service summonses to produce records or give testimony. (26 U.S.C. § 7604(b).)
- (19) Issuance of administrative inspection warrants. (*In the Matter of Establishment Inspection of Gilbert and Bennett Manufacturing Co.*, 589 F.2d 1335, 1340-41 [7th Cir. 1979].)
- (20) Institution of proceedings against persons violating certain civil rights statutes. (42 U.S.C. § 1987.)
- (21) Settling or certification of the non-payment of seamen's wages. (46 U.S.C. § 603.)
- (22) Enforcement of awards of foreign consuls in differences between captains and crews of vessels of the consul's nation. (22 U.S.C. § 258(a).)
- (23) Conduct of proceedings under the Federal Debt Collection Act to the extent not inconsistent with the Constitution and laws of the United States. (28 U.S.C. § 3008.)

(b) **Disposition of Misdemeanor Cases -- 18 U.S.C. § 3401.** A magistrate judge may:

- (1) Conduct the trial of persons accused of, and sentence persons convicted of, misdemeanors, including petty offenses committed within this district. Pursuant to 18 U.S.C. § 3401(a), each magistrate judge is hereby specially designated to exercise the jurisdiction conferred by such section with the written consent of the defendant as provided in 18 U.S.C. § 3401(b); such trial shall be by jury in the case of all Class A misdemeanors unless waived in writing by the defendant;
- (2) Direct the probation service of the court to conduct a pre-sentence investigation in any misdemeanor case.

Any appeal from the judgment of the magistrate judge shall be as provided in 18 U.S.C. § 3402.

(c) **Determination of Non-Dispositive Pre-trial Matters -- 28 U.S.C. § 636(b)(1)(A).**

- ~~(1) — A magistrate judge may hear and determine any procedural or discovery motion or other motion or pre-trial matter in a civil or criminal case, other than the motions which are specified in Local Rule 72.1(d) of these rules, in accordance with Fed. R. Civ. P. 72(a).~~
- ~~(2) — Review of Non-Dispositive Rulings. Any party may seek review of a magistrate judge's order determining a motion or matter under Local Rule 72.1(c)(1) within ten (10) days after being served with a copy of the order. Such party shall file with the Clerk, and serve on all parties, its objection or petition for review which shall specifically designate the order, or part thereof, subject to review and the basis therefor.~~

(d) **Recommendation Regarding Case-Dispositive Motions -- 28 U.S.C. § 636(b)(1)(B).**

- (1) A magistrate judge may submit to a district judge of the court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pre-trial motions in civil and criminal cases in accordance with Fed.R.Civ.P. 72(b):
 - (A) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
 - (B) Motions for judgment on the pleadings;
 - (C) Motions for summary judgment;
 - (D) Motions to dismiss or permit the maintenance of a class action;
 - (E) Motions under Fed. R. Civ. P. 72(a);
 - (F) Motions to involuntarily dismiss an action;
 - (G) Motions for review of default judgments;

- (H) Motions to dismiss or quash an indictment or information made by a defendant;
- (I) Motions to suppress evidence in a criminal case;
- (J) Applications for post-trial relief made by individuals convicted of criminal offenses;
- (K) Petitions for judicial review of administrative decisions regarding the granting of benefits to claimants under the Social Security Act, and related statutes;
- (L) Petitions for judicial review of an administrative award or denial of licenses or similar privileges;
- (M) Any matter that may dispose of a charge or defense in a criminal case.

~~(2) Any objections to the magistrate judge's report and recommendation shall be filed with the clerk in accordance with 28 U.S.C. § 636(b)(1), and failure to file timely objections within the ten (10) day period set forth therein shall constitute a waiver of subsequent review absent a showing of good cause for such failure.~~

- (32) A magistrate judge may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(e) **Prisoner Cases under 28 U.S.C. § 2254 and 2255.** A magistrate judge may perform any or all the duties imposed upon a judge by the rules governing proceedings in the United States District Court under §§ 2254 and 2255 of Title 28, United States Code. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a district judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may only be made by a judge. In the event no hearing is held by the magistrate judge, the magistrate judge may, pursuant to 28 U.S.C. § 636(b)(3) acting as legal advisor to the district judge, submit to the judge a proposed entry ruling on the motion. If the district judge so directs, copies of such proposed ruling need not be served on the parties of counsel.

(f) **Prisoner Cases under 42 U.S.C. § 1983.** A magistrate judge may:

- (1) Review prisoner suits for deprivation of civil rights arising out of conditions of confinement under § 1983 of Title 42, United States Code and issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of the suits by the district judge. Any order disposing of prisoner suits challenging the conditions of their confinement may only be made by a district judge.
- (2) Take on-site depositions, gather evidence, conduct pretrial conferences, or serve as a mediator at a holding facility in connection with civil rights suits

filed by prisoners contesting conditions of confinement under § 1983 of Title 42, United States Code.

- (3) Conduct periodic reviews of proceedings to ensure compliance with previous orders of the court regarding conditions of confinement.
- (4) Review prisoner correspondence.

(g) **Special Master References -- 28 U.S.C. § 636(b)(2).** A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53(b) .

(h) **Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties -- 28 U.S.C. § 636(c).** Upon the consent of the parties, a full-time magistrate judge is hereby authorized and specially designated to conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Pursuant to 28 U.S.C. § 636(c)(1), upon the consent of the parties, pursuant to their specific written request, and upon certification by the chief judge of this court that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit, any part-time magistrate judge who does not serve as a full-time judicial officer but who meets the bar requirements set forth in 28 U.S.C. § 631(b)(1), is hereby authorized and specifically designated by this court to conduct any or all proceedings in a civil case, whether jury or non-jury. In the course of conducting such proceedings, upon consent of the parties, a magistrate judge may hear and determine any and all pre-trial and post-trial motions which are filed by the parties, including case-dispositive motions.

(i) **Additional Duties -- 28 U.S.C. § 636(b)(3).** A magistrate judge of this court is also authorized to:

- (1) Exercise general supervision of civil and criminal calendars, including the handling of calendar and status calls, and motions to expedite or postpone the trial of cases for the district judges;
- (2) Conduct preliminary and final pre-trial conferences, status calls, settlement conferences, and related pre-trial proceedings in civil cases, and prepare a pre-trial order following the conclusion of the final pre-trial conference;
- (3) Conduct pre-trial conferences, omnibus hearings, and related pre-trial proceedings in criminal cases;
- (4) Conduct arraignments, accept not guilty pleas, and order pre-sentence reports on defendants who signify the desire to plead guilty. (A magistrate judge, however, may not accept pleas of guilty or *nolo contendere* in cases outside

the jurisdiction specified in 18 U.S.C. § 3401);

- (5) Receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);
- (6) Accept waivers of indictment, pursuant to Fed. R. Crim. P. 7(b);
- (7) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;
- (8) Hear and determine motions by the government to dismiss an indictment, information, or complaint without prejudice to further proceedings;
- (9) Conduct voir dire and select petit juries in civil cases for the court;
- (10) Accept petit jury verdicts in civil cases in the absence or unavailability of a judge;
- (11) Order the exoneration or forfeiture of bonds;
- (12) Conduct proceedings for the collection of civil penalties of not more than \$200.00 assessed under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§ 4311(d), 12309;
- (13) Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;
- (14) Serve as eminent domain commissioner as provided in Fed. R. Civ. P. 71A;
- (15) Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
- (16) Serve as a member of this District's Speedy Trial Act Planning Group, including service as the reporter (18 U.S.C. § 1368);
- (17) Supervise proceedings on requests for letters rogatory in civil and criminal cases upon special designation by the district court as required under 28 U.S.C. § 1782(a);
- (18) Hear and determine applications for admission to practice before this District Court;
- (19) Preside over naturalization ceremonies and administer the oath of renunciation and allegiance required by 8 U.S.C. § 1448(a). Following these ceremonies, a magistrate judge shall submit to a judge of this court a report

containing the names of applicants who took the oaths administered. (A magistrate judge may not conduct final hearings or preliminary examinations of petitioners or witnesses, as those functions are expressly vested in naturalization examiners or in judges by 8 U.S.C. §§ 1447(a) and (b)); and

(20) Conduct proceedings supplemental; and

(21) Perform any additional duty as is not contrary to the law of this District and Circuit nor inconsistent with the Constitution and laws of the United States.

(j) **Assignment of Matters to Magistrate Judge.** The cases in which each magistrate judge is authorized to perform the duties enumerated in these rules are those cases assigned to the magistrate judge by rule or order of this court, or by order or special designation of any district judge of this court.

Committee Comments

The proposed revisions to this local rule were inspired by newly adopted Fed.R.Crim.P.59 relating to appeals from dispositive and non-dispositive rulings by Magistrate Judges in criminal cases. The current version of L.R. 72.1 which references such appeals, see present 72.1(c)(2) and 72.1(d)(2), is now no longer necessary given Fed.R.Crim.P. 59 and thus, the Committee recommends deleting these provisions. In addition, the Committee added 72.1(d)(1)(M) to clarify that Magistrate Judges may issue proposed findings of fact and a recommendation disposing of a charge or defense in a criminal case.

L.R. 83.3

Courtroom and Courthouse Decorum

At its March 1979 meeting the Judicial Conference of the United States amended its March 1962 resolution pertaining to courtroom photographs to read as follows:

“RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal court. A judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.”

In the Northern District of Indiana the term “environs” means all areas upon the same floor of the building on which a courtroom, jury assembly room, grand jury room or clerk’s office is located.

Consistent with the Resolution of the Judicial Conference of the United States, and this court's interpretation of the term “environs,” the taking of photographs, sound recording (except by the official court reporters in the performance of their duties), broadcasting by radio, television, telephone, or other means, in connection with any judicial proceeding on or from the same floor of the building on which a courtroom is located are prohibited. *Provided*, however, that incidental to investiture, ceremonial or naturalization proceedings, a judge of this court may, in his or her discretion, permit the taking of photographs, broadcasting, televising, or recording. *And provided further, that video depositions may be taken in the environs of the court upon written approval by a judge of this court.*

Cellular telephones, any device containing a cellular telephone, including Personal Digital Assistants (PDAs), and pagers are permitted in the federal courthouses in the Northern District of Indiana, but must be deposited, and only used at, the Court Security station at the front entrance of each building. Building personnel and federal law enforcement officers may have cellular telephones in the district courthouses subject to the following:

- (a) Building personnel shall not be allowed to bring cellular telephones into any courtroom in this district.
- (b) The United States Marshal and all Deputy Marshals shall be allowed to bring cellular telephones into the courtrooms, provided the cellular telephones are switched to a vibrate (rather than an audible) mode prior to entry.
- (c) Visiting federal law enforcement personnel who have been approved by the United States Marshal’s Service to carry cellular telephones are authorized to carry them

directly to and from the agency office they are visiting, but must deposit them there for the duration of their visit.

Committee Comments

The Committee recommends amending the rule to permit cameras and ancillary equipment within the “environs” of the court for video depositions. The term “environs” has not been altered; rather, the amendment seeks to clarify that video equipment for the taking of video depositions is not prohibited under this rule so long as its use has been authorized in writing.

Disciplinary Action Against Attorneys

- (a) **Effect of an Appearance in this Court.** Any attorney authorized to appear on behalf of a client in this court is deemed admitted to practice before this court and is subject to discipline in this court.
- (b) **Violations of Standards for Professional Conduct**
 - (1) Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violate the standards of professional conduct identified in L.R. 83.5(f) constitute misconduct, whether or not the act or omission occurred in the course of an attorney-client relationship.
 - (2) When an attorney admitted to practice before this court engages in misconduct, the attorney may be disbarred, suspended from practice before this court, reprimanded, or subjected to other disciplinary action in accordance with the grievance process established under L.R. 83.6(c).
- (c) **Grievance Process.**
 - (1) **Establishment of the Grievance Committee**
 - (A) The judges of the district court shall appoint a five member panel to serve as a Grievance Committee (“Committee”) for the Northern District of Indiana. The Chief Judge shall designate one member as the chairperson to convene the Committee.
 - (B) The Committee shall include at least one member of the bar of this court from each of the divisions of the court.
 - (C) Committee members shall serve for a period of five years and may be reappointed by the judges of the district court. Upon receiving notification that a Committee member is unable or unwilling to serve the entirety of the member’s appointed term, the judges of the district court shall promptly select a replacement Committee member. The terms of the Committee members will be staggered, with one member replaced or the term renewed annually by the district court. The initial Committee members will serve terms from one to five years so as to establish this rotation. The Committee will determine at its initial meeting which members will serve these initial terms of service.
 - (D) The Clerk shall either serve or designate a deputy clerk to serve as secretary to the Committee, responsible for maintaining all committee records. The designee shall be a non-voting member of the Committee.
 - (E) Committee members shall serve without compensation, but insofar as

possible, their necessary expenses shall be paid by the Clerk from the Library Fund.

- (F) By January 31 of each year, the Committee shall provide the district court with a written report of its actions during the previous calendar year. The report shall include information concerning the complaints filed, the number of pending investigations, and the disposition of complaints.
- (G) The members of the Committee, with respect to their actions in such capacity, shall be considered as representatives of, and acting under the powers and immunities of, the district court; and they shall enjoy all such immunities while acting in good faith in their official capacities.
- (H) Any three or more members shall constitute a quorum and may act on behalf of the Committee.

(2) Filing a Grievance

- (A) The Clerk shall maintain a form complaint that may be utilized to initiate a grievance proceeding against an attorney admitted to practice before this court. A complaint shall identify the attorney and provide a short and plain statement of the claim of misconduct. The complaint shall be verified and filed under seal with the Clerk. Once filed, the Clerk shall present the filing to the Committee. The complaint shall remain under seal until such time as the Committee determines that there is probable cause to investigate the complaint.
- (B) A judge of this court may initiate a grievance proceeding with the entry of an order in a pending case.
- (C) The secretary of the Committee shall promptly provide a copy of the complaint or order to all members of the Committee.

(3) Procedures Before the Grievance Committee

- (A) Upon receiving a complaint or order, the Committee shall either:
 - (i) Determine to conduct a further investigation; or
 - (ii) Determine that the complaint or order raises no substantial question of misconduct and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the complaining person or judge that no further action or investigation is warranted, and it shall also notify the attorney that a claim of misconduct was filed and that the Committee determined to take no further action. The Committee shall supply the attorney with a copy

of the complaint or order.

- (B) If the Committee determines to conduct a further investigation, the Committee shall decide how and to what extent to conduct the investigation. It shall also notify the attorney of the investigation, provide the attorney with a copy of the complaint or order, and direct the attorney to file with the Clerk a written response to the complaint or order within 30 days.
- (C) The Committee shall be vested with such powers as are necessary to the proper and expeditious investigation of any claim of misconduct, including the power to interview witnesses, to compel the attendance of witnesses by subpoena, to take or cause to be taken the deposition of any witness, to secure the production of documentary evidence, and to administer oaths.
- (D) After completing its investigation, the Committee shall either:
 - (i) Determine to hold a formal hearing; or
 - (ii) Determine that no substantial question of misconduct exists and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the complaining person or judge that no further action is warranted, and it shall also notify the attorney that no further action will be taken by the Committee.
- (E) If the Committee determines to hold a formal hearing, it shall schedule the hearing as promptly as possible, provided, however, that delays in the hearing shall not affect the jurisdiction of the Committee. The attorney shall have the right to be present, to be represented by counsel, to present evidence, and to confront and cross-examine witnesses. In conducting the hearing, the Federal Rules of Evidence shall guide the Committee. A record shall be made of the hearing.
- (F) After the hearing, the Committee shall either:
 - (i) Determine that no substantial question of misconduct exists and take no further action against the attorney. If the Committee decides to take no further action, it shall advise the complaining person or judge that no further action is warranted, and it shall also notify the attorney that no further action will be taken by the Committee; or
 - (ii) Determine that the attorney's misconduct merits disciplinary action. Among the actions which the Committee can recommend are one or more of the following:
 - (aa) A private reprimand;

- (bb) A public reprimand;
 - (cc) Suspension of the attorney from the bar of the district court;
 - (dd) Disbarment of the attorney from the district court; and
 - (ee) A referral of the matter to another appropriate disciplinary board for disciplinary action.
- (G) At any point during the investigation or during or after the hearing, the attorney can propose a disciplinary action for the claim of misconduct. If the Committee believes that the proposed disciplinary action is appropriate, it can recommend the imposition of that action in lieu of further proceedings before the Committee.
- (H) All investigations, deliberations, hearings, and other proceedings of the Committee, as well as all documents presented to the Committee, shall remain confidential. All meetings and hearings of the Committee shall be held *in camera* and the business conducted by the Committee shall remain confidential. In its judgment, however, the Committee may disclose some or all aspects of its proceedings to the district court judges, to complainants, and to other disciplinary committees.

(4) Proceedings Before the District Court

- (A) If the Committee recommends that disciplinary action be taken against an attorney, it shall forward its recommendation, along with a written report of its findings and conclusions, to the Chief Judge of this court. The written report shall be a public record, provided, however, any recommendation of a private reprimand shall remain under seal.
- (B) Upon receiving a written report by the Committee finding that misconduct occurred, setting forth specific facts in support of its conclusion and recommending disciplinary action, the Chief Judge shall issue an order requiring the attorney to show cause in writing why the Committee's findings and recommendations should not be adopted by the court. Within 30 days after service of the show cause order, the attorney may file a written response with the Clerk. After considering the attorney's response, if any, the Chief Judge, upon a majority vote of the active district judges of the court, may adopt, modify, or reject the Committee's findings and recommendations without a hearing, or, if deemed appropriate, the Chief Judge may set the matter for a hearing before a judicial officer.
- (C) The designated judge shall conduct a hearing promptly and issue a report to the district court which includes proposed findings of fact and a recommended disposition of the case. In conducting the hearing, the Federal

Rules of Evidence shall guide the designated judge.

- (D) The Chief Judge, upon the majority vote of the active district judges of the Court, may adopt, modify, or reject the findings and recommendations or take such other action as deemed appropriate. Notice of the disposition shall be provided to the attorney, the complaining person or judge, and the Committee chairperson.

(d) **Attorneys Convicted of Crimes.**

- (1) Upon the filing with this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the court may set aside such order when it appears in the interest of justice to do so.
- (2) The term “serious crime” shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime.”
- (3) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.
- (4) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Chief Judge shall in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to the Grievance Committee for the institution of a disciplinary proceeding in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.
- (5) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a “serious crime,” the Chief Judge may refer the matter to the Grievance Committee for whatever action the Committee deems warranted, including the institution of a disciplinary proceeding; provided, however, that the

Chief Judge may, in his or her discretion, make no reference with respect to convictions for minor offenses.

- (6) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.
- (7) An attorney admitted to practice before this court shall, upon being convicted of a serious crime in any court of the United States, or the District of Columbia, or any state, territory, commonwealth, or possession of the United States, promptly inform the Clerk of such action.

(e) **Discipline Imposed by Other Courts**

- (1) Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of such action.
- (2) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, the Chief Judge shall forthwith issue a notice directed to the attorney containing:
 - (A) a copy of the judgment or order from the other court; and
 - (B) an order to show cause directing that the attorney inform this court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (4) hereof that the imposition of the identical discipline by the court would be unwarranted and the reasons therefor.
- (3) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.
- (4) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (e)(2) above, the Court shall impose the identical discipline unless the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:
 - (a) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - (b) that there was such an infirmity of proof establishing the misconduct as to

- give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (c) that the imposition of the same discipline by this court would result in grave injustice; or
 - (d) that the misconduct established is deemed by this court to warrant substantially different discipline.

Where the Court determines that any of said elements exist, the court shall enter such other order as it deems appropriate.

- (5) In all other respects, a final adjudication in another court that an attorney has engaged in an act or pattern of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.
- (6) The Chief Judge may at any stage refer the matter to the Grievance Committee to conduct disciplinary proceedings or to make recommendations to the court for appropriate action in light of the discipline imposed by another court or disciplinary authority.

(f) **Disbarment on Consent or Resignation in Other Courts**

- (1) An attorney who has been disbarred on consent or resigned from the bar of any other court of the United States or the District of Columbia, or by a court of any State while an investigation into allegations of misconduct is pending, is subject to discipline as set forth below.

(2) **Procedure**

- (A) Upon being informed of disbarment on consent or resignation such as that described above, the Chief Judge, if the judge finds such information to be credible, shall issue an order immediately suspending the attorney pending hearing, and shall issue an order to show cause before the Grievance Committee why the attorney should not be disbarred in this District, and shall refer the matter to the Grievance Committee.
- (B) The attorney has 30 days from the date of entry of the show cause order to respond in writing to the Grievance Committee by filing the response with the Clerk.
- (C) If the attorney responds to the show cause order and if the response necessitates the taking of evidence regarding disputed facts, the Grievance Committee may set the matter for hearing with notice to the attorney.
- (D) If the Grievance Committee finds that the attorney was disbarred on consent or resigned while an investigation into allegations of misconduct is pending, or if the attorney fails to respond to the show cause order, the Grievance

Committee shall make a report to the Chief Judge. The Chief Judge shall issue an order requiring the attorney to show cause in writing why the Committee's findings and recommendations should not be adopted. After considering the attorney's response, if any, the Chief Judge, upon a majority vote of the active district judges of the court, may adopt, modify, or reject the Committee's findings and recommendations without a hearing, or, if deemed appropriate, the Court may set the matter for a hearing before a judicial officer.

- (E) The designated judge shall conduct a hearing promptly and issue a report to the district court which includes proposed findings of fact and a recommended disposition of the case. In conducting the hearing, the Federal Rules of Evidence shall guide the designated judge.
- (F) The Chief Judge, upon the majority vote of the active district judges of the Court, may adopt, modify, or reject the findings and recommendations or take such other action as deemed appropriate. Notice of the disposition shall be provided to the attorney, the complainant and the Committee chairperson.

(g) **Disbarment on Consent While Under Disciplinary Investigation or Prosecution in this Court**

- (1) Any attorney admitted to practice before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to the Clerk an affidavit stating that the attorney desires to consent to disbarment and that:
 - (A) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
 - (B) The attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;
 - (C) The attorney acknowledges that the material facts so alleged are true; and
 - (D) The attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.
- (2) Upon receipt of the required affidavit, the Clerk shall submit the affidavit to the Chief Judge for entry of an order disbaring the attorney.
- (3) The order disbaring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be

publicly disclosed or made available for use in any other proceeding except upon order of this court.

(h) **Reinstatement.**

- (1) **Automatic Reinstatement.** An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this court.
- (2) **Time of Application for Reinstatement Following Disbarment.** A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.
- (3) **Reinstatement Following Reciprocal Discipline.** An attorney, who has previously been the subject of reciprocal discipline and subsequent termination by another court and also disbarred or suspended from practice in this court, may petition for reinstatement by filing a petition together with a certified copy of the judgment or order of the other court granting reinstatement. Upon receipt of the petition and certified reinstatement judgment or order, the Chief Judge shall promptly review the petition as well as any findings and conclusions of another court, and recommend to the other judges of this court whether or not in his/her opinion the petition and/or findings of another court sufficiently establish the fitness of petitioner to practice law so that he should be reinstated to the roll of attorneys without further hearing. If, after receiving the recommendations of the Chief Judge, a majority of the active district judges of the court agree to reinstatement without further evidence or hearing, the court shall enter a judgment accordingly and the petitioner shall be reinstated. If, on the other hand, after receiving and considering the recommendation of the Chief Judge a majority of the active district judges of the court request additional evidence or hearing prior to making a decision on the petition, a hearing shall be scheduled in accordance with Section (h)(4) of this rule.
- (4) **Hearing on Application for Reinstatement.** If a hearing is required to rule on a petition for reinstatement, the Chief Judge shall promptly refer the petition to the Grievance Committee for a hearing at which the petitioner shall have the burden of establishing by clear and convincing evidence that he/she has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his/her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive to the public interest. Upon completion of the hearing the Committee shall make a full report to the Court. The Committee shall include its findings of fact as to the petitioner's fitness to resume the practice of law and its recommendations as to whether or not the petitioner should be reinstated.
- (5) **Order.** If, after consideration of the Committee's report and recommendation, and

after such a hearing as the Court may direct, a majority of the active district judges finds that the petitioner is unfit to resume the practice of law, the petition shall be denied. If, after consideration of the Committee's report and recommendation and after such a hearing as the Court may direct, the majority of the active district judges finds that the petitioner is fit to resume the practice of law, the court shall reinstate the petitioner, provided that the reinstatement may be made conditional:

- (A) Upon the payment of all or part of the costs of the proceedings, and the making of partial or complete restitution to all parties harmed by the conduct of the petitioner which led to the suspension or disbarment;
 - (B) If the petitioner was suspended or disbarred for five years or more, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment; and
 - (C) Upon any other terms which the court in its discretion deems appropriate.
- (6) **Successive Petitions.** No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.
- (7) **Deposit for Costs of Proceeding.** Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.
- (i) **Service of Papers and Other Notices.** Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at his or her last known address.
- (j) **Duties of the Clerk.**
- (1) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If a certificate has not been so forwarded, the Clerk shall promptly obtain a certificate and file it with this court.
 - (2) Upon being informed that an attorney admitted to practice before this court has been subjected to discipline by another court, the Clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.
 - (3) Whenever it appears that any person convicted of any crime or disbarred or

suspended or censured or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the Clerk shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

- (4) The Clerk shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.
- (5) The Clerk shall serve as the official custodian of all records and shall distribute to the appropriate person or entity communications filed in these actions.
- (k) **Other Disciplinary Powers.** These provisions do not apply to or limit the imposition of sanctions or other disciplinary or remedial action as may be authorized by the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure, or through exercise of the inherent or statutory powers of the court in maintaining control over proceedings conducted before it, such as proceedings for contempt under Title 18 United States Code or under Fed.R.Crim.P. 42.

Committee Comments

In 1978, this Court, along with the Southern District of Indiana, adopted a proposed set of uniform rules that eventually became this Court's Rules of Disciplinary Enforcement. Thereafter, the rules remained generally unchanged, but recently it was observed by members of this Court and the Bankruptcy Judges that in some instances they proved difficult to apply. Given these practical concerns, the Committee was asked to review the rules for possible modification. The task of initial review was assigned to a subcommittee, and after canvassing all the local rules governing attorney discipline in the nation, the subcommittee recommended jettisoning the current rules in favor of what appears to be a favored disciplinary regime centered on a Grievance Committee model. The Advisory Committee adopted the Grievance Committee concept and drafted this rule, generally modeling it on those rules in other districts that employ the Grievance Committee as a "board of inquiry" to investigate claims of attorney misconduct and present findings and recommendations to the Court. The Committee made substantial revisions in the drafting process, however, to meet due process concerns and to ensure the proper level of Court oversight and review. As to the latter point, the Committee was sensitive to the administrative burden that these proceedings may place upon the Chief Judge, and accordingly, put most of those responsibilities upon the Grievance Committee and the Clerk. The Rule also guarantees that the final decision concerning attorney discipline remains at all times with the Judges of the Court. The rule has not been presented in redlined format as it should be viewed as an entirely new disciplinary process that replaces the former Rules of Disciplinary Enforcement.